

Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chairman Hoppin:

During the past ten years the State Water Board has adopted orders closing over a dozen UST cases that were petitioned by responsible parties. These closure orders provide the legal framework for the State Water Board's interpretation of its Resolutions 68-16, 88-63, and 92-49 that allow for closure. The orders closing these cases acknowledged that residual petroleum would be left behind but that it was unlikely that any affected shallow groundwater would be used as a source of drinking water in the timeframe necessary to achieve water quality objectives.

The UST Cleanup Program Task Force created by State Water Board Resolution 2009-0042 urges the State Water Board to adopt a resolution requiring Local Oversight Programs (LOP's), Local Implementing Agencies (LIA's), and Regional Water Boards to apply the decision framework used by the State Board in its UST closure orders to all cases. This should be done as soon as possible while the case review process required by Resolution 2009-042 is underway. We have enclosed a draft resolution for your consideration.

In addition, we request that you direct your staff to prepare and issue instructive guidance that clarifies the decision-making process articulated in the Board findings focusing on 1) site-specific conditions, 2) risk to human health, safety and the environment, and 3) threat to current and future beneficial uses of groundwater resources. This guidance also needs to be finalized as soon as possible.

Keeping cases open that should otherwise be closed immensely burdens responsible parties and drains the UST Cleanup Fund without any meaningful reduction in risk.

Sincerely,

Ravi Arulanantham Ph.D
Sub-Committee Chair

Task Force Members supporting this Recommendation:

Ray Kablanow, Geological Techniques Inc.
Rose Coughlin, Focused Resources
Dawn Zemo, Zemo and Associates
Howard Whitney, Remediation Testing and Design
Curt Stanley, Shell Global Solutions
Ron Chinn, Closure Solutions
Louis Mosconi, ConocoPhillips
David Arrieta, WSPA

Gary Barker, Horizon Environmental Inc.
Jennifer Hartman King, Downey Brand
Robert Schultz, AMEC Geomatrix Inc
Ravi Arulanantham, AMEC Geomatrix Inc
Damon Brown, Stantec Consulting Corp.
Craig Johns, PSSEP/CMTA
Shay Wideman, Valero Energy
Dick Zipp, RJZ Associates
John Ryan, George Figone Exemption Trust
Ken Frank, Chevron
Peter Niemiec, The Law Office of Peter Niemiec

cc:

Frances Spivy-Weber, Vice Chair
Tam M. Doduc, Member
Arthur G. Baggett, Jr., Member
Dorothy Rice, Executive Director

Enclosure

DRAFT Resolution

Framework of UST Closure Orders:

Regional Boards, Local Oversight Programs (LOPs), and Local Implementing Agencies (LIAs), hereafter referred to collectively as Agencies, are responsible for overseeing and approving the investigation, cleanup and eventual closure of sites impacted by underground storage tanks (USTs). The State Water Resources Control Board (State Water Board) has primary responsibility and authority to establish appropriate guidelines, regulations and policies that govern the discretionary actions of Agencies and, when necessary and appropriate, to take action on its own to close a UST case or remand the matter for action consistent with the State Water Board's policies and prior precedential decisions.

Owners and operators of USTs and other responsible parties have the right to petition the State Water Board for review of their case if they believe the corrective action plan for their site has been satisfactorily implemented, but closure has not been granted by Agencies. The State Water Board may close the case or remand the case for action consistent with the State Water Board's decision.

Since 1998, the State Water Board has adopted fourteen orders directing closure of UST cases. These orders articulate how the corrective action (including appropriate levels of investigation and remediation) conducted ensures protection of current and future human health, safety and the environment and how the corrective action complies with applicable waste discharge requirements, state policies for water quality control (specifically State Water Board Resolution 92-49), and water quality control plans (http://www.waterboards.ca.gov/water_issues/programs/ust/publications/closure_orders.shtml).

While State Water Board Resolution 92-49 requires that any UST closure meet applicable water quality requirements, it does not require that the requisite level of water quality be met at the time of UST case closure. Instead, Res. 92-49 specifies compliance with cleanup goals and objectives within a reasonable time frame. The State Water Board has concluded that the determination of what constitutes a reasonable period must be based on evaluation of all relevant factors and although the time required to meet the requisite level of water quality may be lengthy, it may be reasonable considering all the relevant facts of the particular case.

Therefore, even if the requisite level of water quality has not yet been attained, a case should be closed if the level will be attained within a reasonable period and the remaining petroleum constituents do not pose a threat to public health and other sensitive receptors. In the fourteen orders issued by the State Water Board regarding UST closure issues, several factors relevant to the particular UST site and area were considered, such as: (1) whether remaining petroleum constituents will migrate beyond the limited spatial extent, (2) the presence and location of drinking water wells in the area, (3) the likelihood that the impacted groundwater will be used as a source of drinking water in the reasonably foreseeable future, and (4) the protective nature of standard well-construction practices.

When considering whether to close UST cases, many Agencies have not used the analytical framework established under Res. 92-49 and the aforementioned State Water Board closure orders. As a result, a significant number of cases that otherwise should

have been closed continue to remain open, unnecessarily burdening not only responsible parties and Agencies staff resources, but also the UST Cleanup Fund.

Direction to Agencies:

When considering whether a UST cleanup case should be closed, Agencies shall apply the decision framework established in State Water Board Res. 92-49, which incorporates State Water Board Resolutions 68-16, 88-63 and UST closure orders. Consistent with the decision framework in the State Water Board UST closure orders, a UST case should be closed if the residual contamination does not pose a threat to human health or safety, is localized and unlikely to migrate beyond the current spatial extent, and it is unlikely that the affected shallow groundwater will be used as a source of drinking water in the timeframe reasonably necessary to achieve water quality objectives.

